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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/625,330	07/23/2003	Takahiro Tanaka	2562/69798/JPW/FHB	7771

7590

07/27/2006

Cooper & Dunham LLP  
1185 Avenue of the Americas  
New York, NY 10036

EXAMINER
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COONEY, JOHN M

ART UNIT	PAPER NUMBER
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1711

DATE MAILED: 07/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/625,330

Applicant(s)

TANAKA, TAKAHIRO

Examiner

John m. Cooney

Art Unit

1711

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 05 May 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 3-19 and 21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 3-19 and 21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 5-5-06 has been entered.

The following rejections are maintained or set forth as new. All other rejections are withdrawn.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 3-19 and 21 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claim limitation "...without accompanying an opening cells step, called healthy bubble,..." in combination with the limitation "...making cells intercommunicate to each other..." is confusing because the two limitations are in conflict with each other

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when the terminology “healthy bubble” is looked at in light of the supporting disclosure. “Healthy bubble” in the context of this invention is understood to mean the step of opening cells by destroying the membranes of the cells. That “healthy bubble”, from the standpoint of claim interpretation, can be cell opening/membrane destruction through any means, it appears evident that by forming open-celled/intercommunicating celled blocks, by definition, employs the very operation, “healthy bubble” that applicants are claiming to avoid. It can not be determined, in the instant case, what cell opening/membrane destroying operations constitute “healthy bubble” and which ones do not.

Additionally, the term “healthy bubble” from the standpoint of claim interpretation can not be afforded the definition of “healthy bubble” proffered by applicants’ supporting disclosure at page 7 bridging 8.

Applicants’ amendments and arguments have been considered, but the conflict of these limitations is maintained to be evident and “healthy bubble” in the context of the current evidence of record is maintained to have the interpreted meaning indicated above.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 3-19 and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Maruyama et al.(4,264,743).

Maruyama et al. disclose preparations of flexible open-celled polyurethanes having low-air permeability and being formed from feedstock including polyols, isocyanates, catalysts, foaming agents, oxyalkylene-siloxane foam stabilizers, and hydrocarbon fluid compounds which read on the processes and products claimed(see column 4 line 17 - column 8 line 36, column 5 line 50-59, column 9 lines 20-29, and column 16 lines 64-65, as well as, the examples, and the entire document). Murayama et al. discloses ethylene oxide(EO)/propylene oxide(PO) and air permeability values meeting those of applicants' claims (see again, for example, column 7 lines 3-8, examples 1-6, and example 8, as well as, the entire document). Based on its disclosure of suitable operation over the full range of molecular weights values of applicants' claims (see column 6 lines 64-66, as well as, the full disclosure), it is held that Maruyama et al.'s disclosure readily envisions the molecular weight content values set forth by applicants' claims. Murayama et al. is further not seen to be limited to the disclosure of its illustrative examples.

Maruyama et al.'s formed products appear to have consistency in permeability values throughout the samples they test. Since difference is not seen in the products realized, it is seen that the ranges of variation of air permeability values now recited in applicants' claims are inherent to the teaching of Maruyama et al.

Applicants' arguments have been considered, but rejection is held to be proper for the reasons set forth above. Applicants' have not demonstrated association between the ranges of uniform, consistent, low-permeability values defined by the claims and the ranges of molecular weight values for the stabilizer component as defined by their claims, process limitations of their claims, and/or other compositional elements of their claims. Without such an association between the physical and process features of the claims and the ranges of qualitative values of the claims being demonstrated, examiner's position of inherency is not seen to fail.

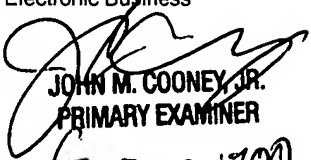
As to the size of the blocks of Murayama et al., the claims of the instant invention do not distinguish based on block size. However, Murayama et al. does disclose the relevant thickness for testing of 10 mm thickness.

Murayama et al.'s disclosure of other means of open-cell formation which may differ from the cell-opening operations of applicants' claims {note: issues raised under 35 USC 112 2<sup>nd</sup> paragraph above} in some of their embodiments does not derogate from the teachings of Murayama et al. taken as a whole.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John Cooney whose telephone number is 571-272-1070. The examiner can normally be reached on M-F from 9 to 6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Seidleck, can be reached on 571-272-1078. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
JOHN M. COONEY, JR.  
PRIMARY EXAMINER  
Group 1700